

REMARKS

The present Amendment is in response to the Official Action mailed January 20, 2007. Claims 1, 5, 11, 27, and 42 have been amended. Claims 8-10, and 41 have been previously cancelled. Therefore, claims 1-7, 11-40 and 42 remain currently pending in the present application. The following sets forth Applicants remarks relating to the outstanding Action and the currently pending claims.

As an initial matter, Applicants respectfully thank the Examiner for taking the time to conduct a lengthy telephone interview on April 23, 2007 with their undersigned counsel. In that discussion, the Examiner suggested that should Applicants incorporate further limitations relating to the patterns exhibited by the hole guide and the cutting guide of the currently pending claims, such may prove to be useful in defining the present invention over the cited prior art. As will be discussed more fully below, Applicants have indeed incorporated additional subject matter relating to the hole guide and the cutting guide, and the patterns exhibited by both. Because these additional limitations comport with the Examiner's suggestions, Applicants request that the Examiner reconsider her previous rejections and issue a Notice of Allowance for the present case. Also per the Examiner's suggestions, the present Amendment is being submitted in conjunction with a Request for Continued Examination ("RCE"). Although the submission of an RCE essentially ensures that any directly subsequent Action be issued as a non-final Action, Applicants respectfully thank the Examiner for indicating that she would indeed only issue a non-final Action, if necessary. Moreover, the Examiner's indication that further interviews regarding the present matter could be conducted in the hopes of ultimately achieving allowance of the present case is much appreciated. The Examiner's interview summary mailed May 7, 2007 confirms all of this.

In the Official Action, the Examiner first noted the previous election of the species of Figure 1, and the fact that claims 6, 7, 16, 18, 19, 25, and 30-32 were withdrawn from further consideration in light of same. Although not discussed in the aforementioned April 23rd telephone interview, Applicants would like to point out that a good case can be made that all of these withdrawn claims read upon the embodiment depicted in Figure 1. For example, it is clearly contemplated that the graft forming guide shown in that Figure include removable hole and cutting guide inserts, ala claim 6. The Examiner's attention is directed to paragraphs [0035] and [0036] of the present application. It is noted that other of the subject matter included in these withdrawn claims also clearly falls within the realm of the species elected. As such, Applicants respectfully request reconsideration of the withdrawal of such claims. Should the Examiner disagree, Applicants request further discussion on the matter, and note that they would be willing to in fact cancel certain of the claims in order to facilitate allowance of the present case, if necessary.

Further in the Official Action, the Examiner basically reiterated the same rejections set forth in the previous Action received in the matter. Namely, the Examiner rejected claims 1-5, 11-15, 17, 20-24, 26-29, 33-37, 39, 40, and 42 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,749,876 to Duvillier et al. ("Duvillier") and claim 38 under 35 U.S.C. § 103(a) as being obvious over Duvillier. In responding to the identical rejections in the previous Action, Applicants attempted to argue over same by indicating that Duvillier did not teach the hole guide of the present invention. In the latest Official Action, the Examiner has essentially indicated that Applicants' previous arguments were fully considered but not found persuasive. Although Applicants still disagree with the Examiner's characterization of the Duvillier

reference, and especially the Examiner's characterization of element 46 of Duvillier as being a hole guide having a plurality of holes 49, the presently presented amendments of the currently pending claims, in Applicants' opinion, even more clearly overcome the rejections set forth in the outstanding Action. Each of the currently pending independent claims that include a hole guide limitation now require that the hole guide include a hole pattern allowing for holes to be made along first and second spaced apart portions of the perimeter of the bone graft. In other words, such claims now require that two separate sections of the perimeter of the bone graft being formed, be capable of being defined by holes made through the hole guide. This is in contrast to the single straight line of holes exhibited in element 46 of Duvillier, which Applicants still believe to be a plate useful in angularly adjusting the cutting guide of Duvillier. As such, Applicants believe these new amendments to clearly define the Duvillier reference.

Moreover, certain of the currently pending independent claims which include a cutting guide limitation have been amended to require that the cutting pattern allow for cuts to be made along at least first and second spaced apart portions of the perimeter of the bone graft. Once again, this is very clearly different from that taught in Duvillier. As such, Applicants respectfully submit that each of the currently pending independent claims constitute allowable subject matter. Given that the remaining claims in the present application properly depend upon one of amended independent claims 1, 5, 11, 27, and 42, such claims are also necessarily allowable. A dependent claim is necessarily narrower than the independent claim from which it properly depends. Of course, should the Examiner not agree with Applicants' herein made amendments to the currently pending claims, she is requested to contact Applicants' undersigned counsel prior to issuing an additional

formal communication in the matter. Should there be different language acceptable to the Examiner, such may be able to be dealt without the issuance of additional formal communications.


As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which she might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: May 23, 2007

Respectfully submitted,

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